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June 7, 2019

Via Electronic Filing

Jocelyn G. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, SC 29211

Re: ***Ecoplexus, Inc. vs. South Carolina Electric and Gas Company***
Docket Number 2019-130-E

Dear Ms. Boyd:

Enclosed for filing in connection with the above-referenced matter, please find *Reply in Support of Motion for Judgment on the Pleadings and to Dismiss,* on behalf of Dominion Energy South Carolina, Inc. (formerly South Carolina Electric & Gas Company).

By copy of this letter, we are serving the Reply upon the parties of record and attach a certificate of service to that effect.

If you have any questions, please do not hesitate to contact me.

Sincerely,

J. Ashley Cooper

JAC:vbb
Enclosure
cc: (Via Electronic Mail and First Class Mail)
Richard L. Whitt
Jeremy C. Hodges
Weston Adams III
Jenny R. Pittman

BEFORE THE

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 2019-130-E

IN RE: Ecoplexus Inc., Complainant, v. South Carolina Electric & Gas Company, Defendant.	)	**REPLY IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS AND TO DISMISS**

Ecoplexus Inc.'s ("Solar Developer") Response ("Response") to Dominion Energy South Carolina, Inc.'s (formerly South Carolina Electric & Gas Company) ("DESC") Motion for Judgment on the Pleadings and to Dismiss ("Motion") is, like Solar Developer's Complaint ("Complaint"), devoid of actual support for Solar Developer's purported "claims." The Response's presentation of Solar Developer's grievances enforces the fact that Solar Developer is not entitled to relief from the Public Service Commission of South Carolina (the "Commission") on any of its claims.

It is clear that the Complaint, especially when read in conjunction with the Answer, is meritless. Therefore, judgment should be entered in favor of DESC.

I. THE COMPLAINT SHOULD BE DISMISSED AND JUDGMENT ON THE PLEADINGS FOUND FOR DESC.

a. The Complaint fails to allege a claim and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure ("S.C.R.C.P.").

Solar Developer alleges it is "entitle[d] to relief under multiple legal theories." (Response at 3). However, any "theories" that can be discerned from the Complaint are factually

unsupported. When evaluating a motion to dismiss, a court is not required to accept as true "conclusory allegations regarding the legal effect of the facts alleged." *Labram v. Havel*, 43 F.3d 918, 921 (4th Cir. 1995). Solar Developer cannot rely on bald assertions and unsupported conclusions to defeat a motion to dismiss. *See, e.g.*, *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009). Furthermore, Solar Developer's theories are not claims against DESC for which relief from this Commission can be obtained.

Solar Developer's "multiple" theories are bulleted and summarized in its Response on Pages 2 and 3. The failures of each of these theories are clearly articulated in the Motion, which is incorporated herein, but are briefly summarized as follows:

> *Failed Theory 1: DESC's standard for establishing a legally enforceable obligation ("LEO") violates PURPA, Section 18 C.F.R. Section 292.304(d) and Federal Energy Regulatory Commission ("FERC") precedent*.

Solar Developer's theory that DESC's standard for establishing a LEO violates PURPA, Section 292.304(d), and FERC precedent, is fundamentally flawed.

PURPA and the FERC's implementing rules allow qualifying facilities ("QFs") to provide power to utilities through contract or pursuant to a LEO, but the FERC has made clear that states have broad authority and discretion in determining whether a LEO has been created. *See*, *e.g.*, *W. Penn Power Co.*, 71 FERC ¶ 61,153 (1995); *Jersey Central Power & Light Co.*, 73 FERC ¶ 61,092 (1995); *Metropolitan Edison Co*., 72 FERC ¶ 61,015 (1995); *Power Res. Group, Inc. v. Pub. Util. Comm'n of Tex*., 422 F.3d 231 (5th Cir. 2005); *Indep. Energy Producers v. Cal. Pub. Utils. Com'n*, 36 F.3d 848, 856 (9th Cir. 1994).

Although the states vary in their requirements for establishing a LEO, and South Carolina has not adopted a LEO standard, the essential element across all states adopting a LEO standard

is that the QF must make a substantial commitment to sell the electrical output of its facility. *See, e.g.*, *JD Wind 1, LLC*, 129 FERC ¶ 61,148 (2009).[1]

Solar Developer's claim should be dismissed because it fails to demonstrate, or even allege, how Solar Developer met the most basic underpinning of establishing a LEO—a substantial commitment to sell. Time and time again, DESC has clearly articulated its LEO requirements to Solar Developer.[2]

Indeed, Solar Developer falls far short of even the minimum bar—a substantial commitment to sell power. Solar Developer failed to provide engineering, procurement, or construction contracts. Solar Developer failed to secure any financial backing. Solar Developer failed to make required initial payments. Although DESC does not, and has not, argued that an executed power purchase agreement ("PPA") is required to establish a LEO, Solar Developer's objections to the numerous form PPAs provided to it by DESC are telling of its lack of commitment to sell power to DESC. As DESC made clear in its Motion, Solar Developer never made anything approaching a "commitment to sell"—the fatal flaw in Solar Developer's LEO claim, no matter the standard. All Solar Developer has done, by its own assertion, is execute lease ***options*** for land and execute two now-terminated interconnection agreements (the "IAs").[3] Surely, a lease ***option*** coupled with two interconnection agreements (whether terminated or otherwise) is not a "substantial commitment" to sell power, and falls drastically short of establishing a LEO.

Failed Theory 2: North Carolina's LEO standard should apply.

Solar Developer instructs the Commission to establish a LEO standard in line with that of

[1] *See also* Motion at 19 n.13
[2] *See* Motion at 20.
[3] The IAs terminated as a result of Solar Developer's failure to perform (i.e., failure to provide the required First Milestone Payments).

another jurisdiction. As discussed above, South Carolina has wide discretion in establishing its own LEO standard and is not bound by the standards of other states. Likewise, DESC cannot be retroactively bound by the standards of other states, as Solar Developer appears to demand. Establishment of a statewide LEO standard, if desired, should be established in the appropriate docket outside of this specific dispute between the parties, and is not an appropriate "claim" for which Solar Developer can be granted relief—this theory should be dismissed. As discussed above, Solar Developer has failed to meet the most basic threshold common to LEO standards across the country. Rather than making a substantial commitment to sell, it has opted for commercial flexibility. The adoption of a LEO standard by South Carolina would not remedy this fatal flaw in Solar Developer's claim.

Failed Theory 3: The unexecuted PPA template offered to Solar Developer violates Section 292.303 because it seeks the sale of output two years and 120 days after execution.

Solar Developer has not yet executed a PPA and has no contractual requirement to sell output to DESC by a certain date. Solar Developer controls the date at which it executes a PPA and the construction necessary for the project Solar Developer demands. Solar Developer is long-aware of the projected completion date set by DESC—June 5, 2023. Solar Developer is also long-aware of the requirement of DESC's PPA template that each project be completed within two years and 120 days from the date that a PPA is executed. This allows the utility to properly plan for the avoided cost rate in a manner that is fair to ratepayers. This requirement does not violate the standards of the South Carolina Generator Interconnection Procedures, Forms, and Agreements (the "South Carolina Standard") and has been filed with the Commission in PPAs for other projects—and Solar Developer cannot demonstrate how efforts to ensure a current avoided cost rate in a manner that is fair to ratepayers violate Section 292.303 of PURPA. Indeed, Solar Developer can negotiate a PPA that will align with the long-articulated date of

construction completion. Because of this, Solar Developer's actual grievance is only that it cannot secure an early avoided cost rate that it desires, rather than one calculated consistent with the avoided cost rate offered to all other South Carolina solar developers. This desire for special treatment is not a claim for which relief should be granted.

Failed Theory 4: DESC's calculation of interconnection costs was somehow discriminatory.

Although Solar Developer's claims in this dispute are largely unsupported by facts, as noted above, the allegation that DESC engaged in some sort of discriminatory practice stands out as one of the more egregious "bald assertions and unsupported conclusions" that are insufficient to support a claim and must be dismissed. DESC is not put on notice by the claims in the Complaint as to how it purportedly "discriminated" or otherwise incorrectly calculated the costs assessed to Solar Developer. In Paragraph 30 of the Complaint, Solar Developer merely states that its review of "available information"—without specifying what information it references—and "discussions with [DESC]"—again failing to specify what discussions—leads Solar Developer to the bald assertion that the facility rating criteria thresholds used were different than those filed in FERC Form 715. Solar Developer goes further in its Response to state that it "believes" DESC used assumptions that were even more conservative than those prescribed by NERC guidelines, but gives no explanation of what led it to such a belief. *See* Response at 10.

Solar Developer cannot simply allege a belief without support and survive a motion to dismiss. *See, e.g.*, *Ashcroft*, 556 U.S. at 678. The information that supported such a belief, if it exists, should have been in Solar Developer's possession before it lodged its allegation. Notably, on Page 8 of the Response, Solar Developer alleges its engineers and executives could submit affidavits concerning the purported differences in application of costs—yet, Solar Developer opted not to put DESC on notice about this purported claim. Once again, DESC complied with

the South Carolina Standard in assessing these interconnection costs, developing study assumptions, and providing information on the same to Solar Developer.[4] Surely, Solar Developer is not, and cannot, allege that the South Carolina Standard itself is discriminatory. The claim is without support and should be dismissed.

b. Taken together, the Complaint and Answer award judgment to DESC under Rule 12(c) of the S.C.R.C.P.

While the theories of the Complaint fail on their face, as noted above, a review of the Complaint and Answer clearly show that the pleadings, even when taken together, cannot support the claims raised by the Solar Developer—therefore, judgment should be entered in favor of DESC pursuant to Rule 12(c) of the S.C.R.C.P. *See, e.g.*, *Diminich v. 2001 Enters., Inc.*, 355 S.E.2d 275, 275 (S.C. Ct. App. 2003).

II. THE MOTION HAS NOT BEEN CONVERTED TO A MOTION FOR SUMMARY JUDGMENT.[5]

To avoid dismissal and judgment, Solar Developer wrongly attempts to convert DESC's Motion to one for summary judgment and allege that it has not been afforded an opportunity to properly respond. The sole basis for the alleged conversion is the inclusion of "Additional Information" by DESC in its Motion, as defined in the Response. However, the Commission is expressly permitted to rely on information referenced in the Complaint and provided to the Commission by DESC without converting the Motion into one for summary judgment. *See* S.C.R.C.P. 10(c); S.C.R.C.P. 12(b)(6); *see, e.g.*, *Muckelvaney v. Liberty Life Ins. Co.*, 198 S.E.2d

[4] *See* Motion at 11-16.

[5] DESC specifically reserves the right to bring a Motion for Summary Judgment in the future. In South Carolina, the denial of a party's summary judgment motion does not preclude that party from making a later motion for summary judgment that contains new evidence. *See, e.g.*, *Dorrell v. S.C. Dep't of Transp.*, 605 S.E.2d 12 (S.C. 2004). Even if a subsequent motion does not contain new evidence, issues raised in the prior motion for summary judgment may be "raised again later in the proceedings by a motion to reconsider the summary judgment motion or by a motion for a directed verdict." *Ballenger v. Bowen*, 443 S.E.2d 379, 380 (S.C. 1994). Regardless, "the denial of summary judgment does not *finally* determine anything about the merits of the case and does not have the effect of striking any defense since that defense may be raised again later in the proceedings." *Id.* (emphasis in original).

278, 280 (S.C. 1973).[6]

On Page 4 of the Response, Solar Developer provides a chart of the Additional Information. Each of the complained of items, though downplayed by Solar Developer to avoid defeat of its claims, was actually referenced in the Complaint and may therefore be considered by this Commission:

	"Additional Information" cited by Solar Developer	**Location in Motion to Dismiss**	***Location in Complaint***
1.	Excerpt from Power Flow section of Projects' System Impact Studies	p. 12	***p. 5, p. 6 n.41, ¶ 28, ¶ 29, and ¶ 33 of the Complaint (citing various aspects of the assumptions and methodologies used in the system impact studies.)***
2.	Glossary of Terms Used in NERC Reliability Standards	Exhibit 1, p. 2	***Item of public record.***[7]
3.	Email from John Folsom to Erik Stuebe dated August 21, 2017	Exhibit 2, p. 5	***p. 4 and Exhibit F of the Complaint (by email dated August 21, 2017 . . . ") ("[b]etween August 2017 and April 2018, draft versions of the PPA were exchanged.")***

[6] *See also, e.g.*, *In re Dunes Hotel Assocs.*, 194 B.R. 967, 975 (D.S.C. Bankr. 1995); *Norfolk Federation of Business Districts v. City of Norfolk*, 103 F.3d 119, *1 (4th Cir. 1996) (unpublished); *Ladd Furniture, Inc. v. Ernst & Young*, No. 2:95-CV-00403 (M.D.N.C. 1996); *Pension Benefit Guar. Corp. v. White Consol. Indus.*, 998 F.2d 1192 (3rd Cir. 1993), *cert. denied*, 510 U.S. 1042 (1993); *Venture Assocs. v. Zenith Data Sys.*, 987 F.2d 429 (7th Cir. 1993); *Cortec Indus., Inc. v. Sum Holding L.P.*, 949 F.2d 42, 48 (2nd Cir. 1991), *cert. denied*, 503 U.S. 960 (1992); *Fudge v. Penthouse Int'l., Inc.*, 840 F.2d 1012 (1st Cir. 1988), *cert. denied*, 488 U.S. 821 (1988); *Haskell v. Time, Inc.*, 857 F. Supp. 1392, 1396 (E.D. Cal. 1994).

[7] The Commission may consider public information. Where a "fact is either of such common knowledge that it is accepted by the general public without qualification or contention, or its accuracy may be ascertained by reference to readily available sources of indisputable reliability." *Eadie v. H.A. Sack Co.*, 470 S.E.2d 397, 401 (S.C. Ct. App. 1996); *see also Philips v. Pitt Cty. Mem'l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009) (holding that under the Federal Rules of Civil Procedure, a court can "properly take judicial notice of matters of public record" when considering a motion to dismiss).

4.	Email from John Folsom to Mike Wallace dated April 16, 2018	Exhibit 2, p. 5	***p. 4 and Exhibit F of the Complaint ("[b]y email dated April 16, 2018 . . . ") ("[b]etween August 2017 and April 2018, draft versions of the PPA were exchanged.")***
5.	Email from Michael Wallace to John Folsom dated April 26, 2018	Exhibit 2, p. 5	***p. 4 of the Complaint (the "April 25, 2018 Letter" referenced in the Complaint was transmitted to DESC via this correspondence.)***
6.	Email from Michael Wallace to John Folsom dated July 9, 2018 with email thread from John Folsom of DESC to Mike Wallace dated July 6, 2018	Exhibit 2, p. 6	***p. 4 of the Complaint ("Ecoplexus and [DESC] have continued to negotiate terms for a PPA.")***
7.	DESC response letter from John Folsom to Michael Wallace dated August 13, 2018	Exhibit 4, p. 6	***p. 4 of the Complaint ("Ecoplexus and [DESC] have continued to negotiate terms for a PPA.")***
8.	Email from Fernando Blanco to Andrew Underwood/DESC dated November 19, 2018	Exhibit 5, p. 11	***¶ 28, ¶ 30, and ¶ 32 of the Complaint (citing the meeting with DESC which Mr. Blanco describes as "productive" in the email.)***
9.	Email from Matthew Gissendanner to Richard Whitt (Solar Developer's then-current counsel) dated July 27, 2017	Exhibit 8, p. 20	***Exhibit F to the Complaint ("[o]n July 27, 2017, [DESC] sent an email to Mr. Richard Whitt.")***
10.	Email from Matthew Gissendanner to Richard Whitt (Solar Developer's then-current counsel) dated July 19, 2017	Exhibit 8, p. 20	***¶ 8 of the Complaint ("[DESC] has consistently explained [its LEO standard].")***

The Motion simply highlights material that is also contained in the Complaint. Therefore, the Motion is not converted to a motion for summary judgment. The Motion can be resolved pursuant to the motion to dismiss or motion for judgment on the pleadings standards cited above and in the Motion. Furthermore, Solar Developer's assertion that the Motion contemplates the need for additional evidence is forced. DESC did not attach certain documents to the Motion that Solar Developer itself alleges are (i) confidential (such as the System Impact Studies) and (ii)

should not be filed publicly without appropriate protection protocol. These documents were cited in the Complaint and are clearly in possession of both parties. DESC's mere echo of Solar Developer's reference to the confidentiality of these documents in the Complaint cannot be logically extended to imply that DESC believes that additional discovery or evidence is required to resolve the Motion.

Nor does the Commission's plan to resolve Solar Developer's separate Motion, and determine the impact of failure to make milestone payments on an interconnection agreement, extend to foreclose resolution of the Complaint's other allegations. Indeed, the Hearing Officer for this matter has noted that oral arguments on the Motions for Status Quo will only address "the issue of interconnection agreement milestone payments and the resulting motions for status quo," while the "underlying substantive issues in the Complaint . . . will be addressed at a later time."[8] By hearing the Motions for Status Quo, the Commission does not limit its ability to decide the substantive merits of the Complaint through a separate proceeding when a hearing on the Motion is scheduled.

Were the Motion converted to a motion for summary judgment, a dismissal of the Complaint is still warranted, as the facts necessary to resolve the theories of Solar Developer's Complaint are not in dispute:

1. The parties do not dispute DESC's standard for establishing a LEO. Whether such standard violates some yet unnamed aspect of a future-adopted LEO standard in South Carolina is a matter of law and will not be impacted by discovery. Solar Developer's complaint that DESC's standard for establishing a LEO violates PURPA or FERC precedent is easily resolved at this early stage, given that the FERC has delegated authority to the states as noted above. Critically, Solar Developer has yet to demonstrate the level of commitment required across jurisdictions that have adopted a LEO standard. It is undisputed that Solar Developer has only engaged in minimal, non-binding efforts, and the Commission can easily note that such acts do not show substantial commitment by Solar Developer.

[8] Email from Josh Minges, a member of the Commission's legal staff, addressed to a working group that included counsel for DESC and Solar Developer (May 31, 2019, 1:41PM EST) (attached as **Exhibit 1**).

2. There is no dispute as to what North Carolina requires for establishment of a LEO. Again, this issue is resolved at this early stage, as what North Carolina does is not binding on this Commission.

3. The parties do not dispute the terms of the draft PPA or the now-terminated IAs. The draft PPA presented to Solar Developer requires the sale of output within two years and 120 days from the date that the PPA is executed. This requirement, which has been included in other PPAs filed with the Commission and does not in any way violate the South Carolina Standard, helps ensure a predictable avoided cost rate. Solar Developer has not executed a PPA in this matter, so the date at which it would need to sell output to DESC is theoretical. It is within Solar Developer's power to negotiate a PPA that aligns with any projected construction dates agreed to with DESC. No further information is needed to decide whether this violates Section 292.303 of PURPA—one can easily see the draft PPA does not.

   Furthermore, the due dates for the first milestone payments ("First Milestone Payments") under the now-terminated IAs are governed by Section 5.2.4 of the Commission-approved South Carolina Standard, which mandates that the First Milestone Payments should have been submitted to DESC no later than April 16, 2019 (only 45 business days from the date Solar Developer executed the IAs), which is also the agreed-upon due date in Appendix 4 of the IAs. Additional evidence will not impact either document.

4. Of the facts provided by Solar Developer, there does not appear to be a dispute as to the discussions leading to the calculation of interconnection costs. Solar Developer makes the unsupported conclusion that DESC discriminated against Solar Developer in its calculation of costs. The parties do not, however, dispute that DESC has not given Solar Developer the underlying and internal models required to run its own studies. DESC clearly stated that it reviewed these actual models with Mr. Blanco and explained its assumptions and methodology—an event that Solar Developer does not now dispute. *See* Motion at 10; Response at 9. Indeed, DESC complied with the South Carolina Standard throughout the entire process. Solar Developer has not, and cannot, point to a specific obligation under South Carolina law, PURPA, the South Carolina Standard, or any other regulation that DESC failed to meet in its engagement with Solar Developer for the purpose of calculating and explaining costs.

   Solar Developer must have a modicum of support for the allegations it brings. *See, e.g.*, *Ashcroft*, 556 U.S. at 678 (holding that "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements" are not enough to support a plausible claim). Solar Developer makes a "last-gasp" effort with its plan to secure affidavits from its own engineers and executives—an act it could have done before, and included in, the Complaint to put DESC on notice of the allegations if such support actually existed. However, with nothing more than a conclusory statement that DESC acted in a discriminatory manner, no further information is needed to resolve this issue in favor of DESC.

CONCLUSION

For the reasons set forth above, the Complaint should be dismissed or the Commission should order judgment in favor of DESC.

Respectfully Submitted,

/s/ J. Ashley Cooper
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Attorneys for Dominion Energy South Carolina, Inc.

Cayce, South Carolina
June 7, 2019

BEFORE THE

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 2019-130-E

IN RE:	)	
Ecoplexus Inc.	)	
Complainant,	)	
	)	**CERTIFICATE OF SERVICE**
v.	)	
South Carolina Electric & Gas Company,	)	
Defendant.	)	

This is to certify that I, Ashley Cooper, have this day caused to be served upon the persons named below the ***REPLY IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS AND TO DISMISS*** by electronic mail and by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

(*via email: jeremy.hodges@nelsonmullins.com*)
(*via email: weston.adams@nelsonmullins.com)*
Weston Adams III
Jeremy C. Hodges
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1320 Main Street, 17th Floor
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(*via email: rlwhitt@austinrogerspa.com*)
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Jenny R. Pittman
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1401 Main Street, Suite 900
Columbia, SC 29201

/s/ J. Ashley Cooper

This 7th day of June, 2019

Exhibit 1

May 31, 2019 Email from Josh Minges

From: "Minges, Josh" <Josh.Minges@psc.sc.gov>
Date: May 31, 2019 at 7:41:15 PM GMT+2
To: Weston Adams <weston.adams@nelsonmullins.com>
Cc: "Boyd, Jocelyn" <Jocelyn.Boyd@psc.sc.gov>, "J. Ashley Cooper" <ashleycooper@parkerpoe.com>, "Pittman, Jenny" <jpittman@ors.sc.gov>, "Jeremy Hodges" <jeremy.hodges@nelsonmullins.com>, Matthew Gissendanner <matthew.gissendanner@scana.com>, Richard Whitt <rlwhitt@austinrogerspa.com>, "K. Chad Burgess" <chad.burgess@scana.com>, "Melchers, Joseph" <Joseph.Melchers@psc.sc.gov>
Subject: RE: [External] June 27 oral argument in Docket Nos. 2019-130-E, 2019-51-E and 2018-401-E

*****Caution: External email*****

Weston,

Your letter is correct on all points and matches my understanding as well. The argument scheduled for June 27 is for the purpose of addressing the issue of interconnection agreement milestone payments and the resulting motions for status

quo. The underlying substantive issues in the Complaint, such as Dominion's evaluation and assignment of interconnection costs, will be addressed at a later time.

Josh

From: Weston Adams <weston.adams@nelsonmullins.com>
Sent: Friday, May 31, 2019 11:48 AM
To: Minges, Josh <Josh.Minges@psc.sc.gov>
Cc: Boyd, Jocelyn <Jocelyn.Boyd@psc.sc.gov>; J. Ashley Cooper <ashleycooper@parkerpoe.com>; Pittman, Jenny <jpittman@ors.sc.gov>; Jeremy Hodges <jeremy.hodges@nelsonmullins.com>; Matthew Gissendanner <matthew.gissendanner@scana.com>; Richard Whitt <rlwhitt@austinrogerspa.com>; K. Chad Burgess <chad.burgess@scana.com>
Subject: [External] June 27 oral argument in Docket Nos. 2019-130-E, 2019-51-E and 2018-401-E

Josh:
Ecoplexus requests that the Commission provide additional clarity related to the specific issues that the litigants should address in the upcoming oral argument scheduled for June 27, 2019 ("Oral Argument"). Specifically, based on Commission Order No. 2019-369 issued on May 22, 2019, it is Ecoplexus' understanding that the Oral Argument should solely address the respective pending Motions to Maintain Status Quo ("Motions"), and will not address other issues unrelated to the Motions. If Ecoplexus' assumption is correct, then Oral Argument should address whether the solar developers are required to make interconnection milestone payments pursuant to interconnection agreements while all issues raised in Docket Nos. 2019-130-E, 2019-51-E and 2018-401-E are pending before the Commission, or instead whether these payment obligations are stayed throughout the life of these proceedings. Moreover, it is Ecoplexus' assumption that the Commission will make this determination based on the parties' respective arguments at Oral Argument, as well as the pleadings submitted in the respective proceedings as of the date of the Oral Argument, and will not require the submission of additional affidavits or evidence prior to, or at, Oral Argument.

Further, as background, Ecoplexus notes that the bases for its Motion differs significantly from the bases of the Motions of Beulah and Eastover. As explained by Ecoplexus in its Motion, "the interconnection costs assigned to the Projects by [DESC] were made in a discriminatory manner, in violation of 18 C.F.R. Section 292.306(a). In light of this, as well as additional violations of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), several provisions of 18 C.F.R. Section 292, and Commission orders outlined in the Complaint, the Projects should not be required to make any milestone payments required under the IAs until the issues raised in the proceeding initiated by the Complaint are resolved by the Commission." (Motion at 2). Further, as explained in Ecoplexus' May 28, 2019 response to DESC's motion to dismiss, "[m]any of the arguments outlined in the Complaint, particularly related to DESC's evaluation and assignment of interconnection costs to the Projects in a discriminatory manner, are

highly technical, and will require the development of a robust record, including in some instances the likely submittal of affidavits by Ecoplexus' engineers and executives." (May 28 Response at 7-8). Accordingly, it is Ecoplexus' understanding that the June 27 Oral Argument will not seek to reach a final determination on the underlying merits of any issues raised in Ecoplexus' April 15, 2019 Complaint, because a full analysis of such issues will require additional procedures and the development of a more robust record through discovery. (Note that discovery has not yet commenced in the Ecoplexus matter, nor has any scheduling order been issued in that matter.)

If Ecoplexus' understanding as to the Commission's intention for the June 27 Oral Argument is inaccurate or incomplete, Ecoplexus requests that the Commission provide further clarity related to the issues that it expects to address at the Oral Argument.

Thank you for your help in this regard.

Very best regards,
Weston Adams, III

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